IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.08.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR.JUSTICE AR.RAMALINGAM

W.P.No.6080 of 2001

1. Union of India rep. by the
   Chief Secretary, Government
   of Pondicherry, Pondicherry.

2. The Secretary to Government (Education)
   Government of Pondicherry
   Pondicherry.

3. The Director
   Education Department
   Government of Pondicherry
   Pondicherry.

4. The Principal
   Bharathidasan Govt. College
   for Women, Pondicherry. .. Petitioners

vs.

1. The Central Administrative Tribunal
   Madras Bench rep. by its Registrar
   Chennai.

2. M. Jaisankar .. Respondents

Petitions filed under Article 226 of the Constitution of India praying for an issuance of a writ of certiorari as stated therein.

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For petitioners : Mr. Syed Mustafa
for Govt., Pleader (Pondy)

For 2nd respondent : Mr. K. Chandru, Sr. Counsel
for Mr. D. Saravanan

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ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the Central Administrative Tribunal, Madras Bench dated 08.02.2001 made in O.A.P.No.18/99, the Government of Pondicherry (Education Department) has filed the above writ petition.

2. Heard Mr. Syed Mustafa, learned counsel for the petitioners and Mr. K. Chandru, learned senior counsel for the second respondent.

3. For convenience, the parties are referred as arrayed before the Tribunal. The applicant, Jaisankar was appointed as Lower Division Clerk (LDC) in Bharathidasan Government College for Women, Pondicherry, temporarily on 28.12.1989 and he was placed on probation for a period of two years with effect from 30.12.1989. It is further seen that on 28.09.1991, he availed leave for 12 days, during the said period, he was transferred from Bharathidasan Government College for Women, Pondicherry to the Electricity Department, Pondicherry. On 10.10.1991, he was relieved from duty, with instruction to report for duty before Superintending Engineer, Electricity Department, Pondicherry. When he made a representation on 2.12.1996 seeking permission to rejoin duty, the relieving order dated 10.10.1991 was cancelled and the applicant rejoined duty. Thereafter, he was placed under suspension. The Principal, Bharathidasan Government College for Women, issued a memorandum proposing to hold enquiry on the charge of misconduct and misbehaviour. The applicant through his representation admitted the charges and explained the reasons for his absence. He was asked to submit explanation, why penalty of break in service should not be awarded. Taking into account the explanation of the applicant, the Principal of Bharathidasan Government College for Women, imposed a punishment of "dies non" for the period of unauthorised absence and the punishment of 'not spent on duty' for the period of suspension. Thereafter, an order revoking the suspension was issued on 14.11.1997. When he reported for duty on 14.11.1997, there was no vacancy in the College and the stalemate continued. Since his representation was not considered and even his request for creation of supernumerary post was not accepted, he approached the Tribunal for necessary direction.

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4. It is the case of the Pondicherry Administration that since there was no vacancy in the grade of LDC to accommodate the applicant in the Institution, the applicant was not given posting.

5. The Tribunal, after finding that once the order of suspension is revoked, the applicant is entitled to have a posting, directed the Department to give posting immediately or at least create a supernumerary post to accommodate the applicant and also directed for payment of salary and allowances with effect from 14.11.1997.

6. The learned counsel appearing for the writ petitioners / Pondicherry Administration would submit that the punishment, viz., "dies non" to the applicant is not in consonance with the Rules and accordingly, steps have been taken for imposition of higher penalty. He further contended that the Tribunal committed an error in giving direction that all benefits should be given on the basis that once suspension was revoked, the applicant was entitled to the posting with due salary. According to him, where there was no work at all performed by the applicant, there could be no pay for him.

7. We are unable to accept the above contentions for the simple reason that based on punishment of "dies non" to the applicant, as rightly observed by the Tribunal and argued by the learned senior counsel for the second respondent, the Department ought to have given posting to the applicant. Further, it is also not in dispute that his suspension was also revoked. Inasmuch as the Administration has not responded to his representation, the applicant has rightly approached the Tribunal, which granted relief, and we do not find any error or infirmity for interference.

8. For the above said reasons there is no difficulty in dismissing the writ petition filed by the Pondicherry Administration. However, Mr. K. Chandru, learned senior counsel appearing for the second respondent has brought to our notice that after the impugned order of the Tribunal dated 08.02.2001 in O.A.P.No.18 of 1999 was passed, without setting aside the same by the appropriate forum/Court, the Secretary to Government, Education Department, Government of Pondicherry has issued a show cause notice on 16.04.2001, directing the applicant to show cause within 5 days from the date of receipt of the said notice, as to why the order dated 09.05.1997 of the Principal, Bharathidasan Government College of Women, Pondicherry should not be revised and appropriate further orders passed. It is further brought to our notice that

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pursuant to the said notice, the applicant offered his explanation on 23.04.2001. By order dated 24.04.2001, the Secretary to Government, Education Department, by exercising revisional power, set aside the order of the Principal, Bharathidasan Government College for Women, Pondicherry, dated 14.11.1997, awarding penalty of "dies non" to the applicant and dismissed him from service. It is also brought to our notice that against the said order of dismissal, the applicant / second respondent herein has filed Original Application No.722 of 2001 before the Central Administrative Tribunal, Madras Bench and the same is pending.

9. In this regard, learned senior counsel for the second respondent submitted that after the order of the Tribunal in OAP.No.18 of 1999 dated 08.02.2001, the State Government, here, the Union Territory of Pondicherry has no power to interfere and meddle with the said order without properly setting aside the same by this court. In other words, the State Government / Union Territory cannot vary or modify the judicial decision of the Administrative Tribunal. He brought to our notice that the Constitutional amendment (32nd amendment) Act 1973, giving power to the State Government for modification or annulling order of the Administrative Tribunal has been held by the Supreme Court as unconstitutional.

10. In the case of P.Sambamurthy vs. State of A.P. reported in AIR 1987 SC 663, the Hon'ble Supreme Court has held that the proviso to Article 371-D (5) conferring power on State Government to modify or annul the order of Administrative Tribunal is unconstitutional and void. In the case of N.J. Prabhakar vs. State of A.P. reported in AIR 1988 SC 334, it is held that the annulment of the order of Tribunal reinstating employee by the State Government under Article 371-D(5) of the Constitution is a nullity. In the case of Union of India vs. K.M. Shankarappa reported in 2001 (1) MLJ 146 (SC), the following conclusion of their Lordships is relevant:

> "7. We are unable to accept the submission of the learned counsel. The Government has chosen to establish a quasi-judicial body which has been given the powers, inter alia, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal, consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the filed, gives its decision that decision would be final

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and binding so far as the Executive and the Government are concerned. To permit the Execute to review and / or revise that decision would amount to interference with the exercise of judicial functions by a quasi-judicial Board. It would amount to subjecting the decision of a quasi-judicial body to the scrutiny of the Executive. Under our Constitution the position is reverse. The Executive has to obey judicial orders. Thus, Sec.6(1) of the Cinematograph Act is a traversity of the rule of law which is one of the basic structures of the Constitution. The Legislature may, in certain cases, overrule or nullify the judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the Executive or the Legislature cannot set at naught a judicial order. The Executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consisting of experts decides matters quasi-judicially. A Secretary and/ or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal. "

11. The above decisions make it clear that the executives have no power to review or revise the decision of the Administrative Tribunal. In our case, as rightly pointed out by Mr. K. Chandru, learned senior counsel, after the order of the Tribunal dated 08.02.2001, giving positive direction for the posting of the applicant, the Secretary to Government (Education Department) has issued a show cause notice on 16.04.2004 and finally the applicant was dismissed from service on 24.04.2001. Though the said order is the subject matter of O.A. pending before the Tribunal, we hold that the approach and the steps taken by the Education Department cannot be appreciated. Their decision is contrary to law, particularly with reference the above referred to decisions of the Supreme Court.

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In the light of our discussion, while dismissing the writ petition filed by the Pondidcharry Administration, they are directed to implement the order of the Tribunal within a period of four weeks from the date of receipt of a copy of this order. Though we are not appreciating the conduct of the applicant / second respondent herein, in view of the order of the Tribunal granting relief, inasmuch as the Education Department without waiting for an order from the appropriate forum, namely, this Court, intervened and passed an order of dismissal ignoring the order of the Tribunal, we are constrained to award costs of Rs.3,000/- (Rupees three thousand only) payable to the second respondent herein within the same period as directed above.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar
Central Administrative Tribunal
Madras Bench Chennai.

+ 1 cc to Mr.D.Saravanan, Advocate SR 33350

+ 1 cc to Senior Government Pleader cum Senior Public Prosecutor for Pondicherry SR.33436

Order in
W.P.No.6080 of 2001

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